



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO Hammersmith Partners, LLC FOR Summit Point Apartment Homes Unpermitted Discharge

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Hammersmith Partners, LLC ("Hammersmith Partners"), regarding the Summit Point Apartment Homes facility, for the purpose of resolving certain violations of the State Water Control Law and the applicable law and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. "Facility" means the Summit Point Apartment Homes located at 523 Summit Street in Petersburg, Virginia.
8. "Hammersmith Partners" means Hammersmith Partners, LLC, a business entity authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. Hammersmith Partners is a "person" within the meaning of Va. Code § 62.1-44.3.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
11. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
12. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.

13. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-110-10 *et seq.*
14. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
15. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
16. "PRO" means the DEQ Piedmont Regional Office, located in Glen Allen, Virginia.
17. "Va. Code" means the Code of Virginia (1950), as amended.
18. "VAC" means the Virginia Administrative Code.
19. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. Hammersmith Partners owns and operates the Facility. The Facility includes a private sewer collection system for domestic sewage that connects to public infrastructure.
2. The Facility is adjacent to an un-named ephemeral tributary that drains to Brickhouse Run in the James River Basin (Appomattox River Sub-basin). During DEQ's 2016 water quality assessment for 305(b) reporting, the un-named tributary was not assessed for any specific designated use and is considered a Category 3A waterbody. The Facility was not addressed in the Appomattox River Basin Bacterial Total Maximum Daily Load ("TMDL").
3. On September 14, 2018, the Petersburg Health Department ("PHD") reported a suspected sewage discharge from the Facility. A joint investigation conducted by staff from DEQ and PHD on September 17, 2018 confirmed a sewage discharge from the Summit Point private sewer collection system was entering an unnamed tributary draining to Brickhouse Run. Sewage was observed erupting from a subsurface pipe servicing the facility.
4. DEQ issued an NOV dated October 2, 2018 for the discharge (NOV No. 2018-09-PRO-203). Hammersmith Partners responded to the NOV on October 16, 2018, accepting responsibility for the discharge. Repair to the sewer line to terminate further discharge was completed on October 9, 2018. In addition, Hammersmith Partners informed DEQ that the Facility was recently sold, and is scheduled to close on November 15, 2018.

5. Va. Code § 62.1-44.5(A) states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into State waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
6. The Regulation, at 9 VAC 25-31-50(A), also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into State waters sewage, industrial wastes or other wastes.
7. Va. Code § 62.1-44.5(B) and 9 VAC 25-31-50(B) state that any person who discharges sewage to State waters shall notify DEQ within 24 hours of discovery of the discharge.
8. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
9. The Department has issued no permits or certificates to Hammersmith Partners.
10. The un-named ephemeral tributary draining to Brickhouse Run is a surface water located wholly within the Commonwealth and is a “State water” under State Water Control Law.
11. Based on the results of the September 17, 2018 investigation and other information collected by DEQ, the Board concludes that Hammersmith Partners violated Va. Code § 62.1-44.5(A)-(B) and 9 VAC 25-31-50(A)-(B) by discharging sewage from the Facility without a Permit, as described in this Section.
12. In order for Hammersmith Partners to return to compliance, DEQ staff and representatives of Hammersmith Partners have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Hammersmith Partners, and Hammersmith Partners agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of **\$17,875 within 30 days** of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier’s check payable to the “Treasurer of Virginia,” and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Hammersmith Partners shall include its Federal Employer Identification Number (FEIN) _____ with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Hammersmith Partners shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Hammersmith Partners for good cause shown by Hammersmith Partners, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. 2018-09-PRO-203 dated October 2, 2018. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Hammersmith Partners admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Hammersmith Partners consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Hammersmith Partners declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Hammersmith Partners to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. Hammersmith Partners shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Hammersmith Partners shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Hammersmith Partners shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Hammersmith Partners. Nevertheless, Hammersmith Partners agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Hammersmith Partners has completed all of the requirements of the Order;
 - b. Hammersmith Partners petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Hammersmith Partners.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Hammersmith Partners from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Hammersmith Partners and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Hammersmith Partners certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Hammersmith Partners to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Hammersmith Partners.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Hammersmith Partners voluntarily agrees to the issuance of this Order.

APPENDIX A SCHEDULE OF COMPLIANCE

1. Discharge of Domestic Sewage from the Facility to state waters

- a. Hammersmith Partners, LLC shall immediately cease the discharge of domestic sewage from the Facility to State Waters and:
 - i) Provide for review a copy of the Purchase Agreement describing sale of the Facility by November 8, 2018.
 - ii) Repair the Facility sewage collection system, where necessary, and provide detailed documentation of completion of the repair to DEQ by November 15, 2018;

2. DEQ Contact

Unless otherwise specified in this Order, Hammersmith Partners shall submit all requirements of Appendix A of this Order to:

Virginia Department of Environmental Quality
Piedmont Regional Office / Enforcement
4949-A Cox Road
Glean Allen, Virginia 23060

And it is so ORDERED this _____ day of _____, 2018.

James J. Golden, Regional Director
Department of Environmental Quality

Hammersmith Partners, LLC voluntarily agrees to the issuance of this Order.

Date: 10/25/18 By: _____, Managing Partner _____
Hammersmith Partners, LLC Title
Amir Patel

Commonwealth of Virginia
City/County of Petersburg_

The foregoing document was signed and acknowledged before me this _25th_ day of
October, 2018, by AMIR PATEL of Hammersmith Partners, LLC, on behalf of the company.

Notary Public

7687009
Registration No.

My commission expires: Sept 30, 2020

Notary seal:

